



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2005

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2005-02334

Dear Ms. Chang:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 220471.

The City of Houston (the "city") received a request for all information supporting the recommendation of suspension of a specified city employee. You claim that portions of the submitted information are not subject to the Act or are excepted from disclosure under sections 552.117, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we address your contention that the submitted information "contains a user ID and password that the City believes is not public information and . . . not subject to public disclosure." In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer

¹ We assume that the sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office. To the extent any additional types of responsive information existed on the date the city received this request, we assume the city has released them. If the city has not released any such records, it must do so at this time. *See* Gov't Code §§ 552.301(a), . 302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. Based on the reasoning in that decision and our review of the information at issue, we determine that the user ID and password at issue do not constitute public information under section 552.002 of the Government Code. Accordingly, such information is not subject to the Act and need not be released.

We now turn to your argument regarding the applicability of section 552.117 of the Government Code to the submitted information. Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. You inform us that the former employee at issue made a timely election to keep such information confidential; therefore, that former employee's personal information must be withheld under section 552.117(a)(1). We have marked the information within the submitted records that must be withheld under this exception.

You next argue that a bank account number within the submitted information is excepted from disclosure under section 552.136 of the Government Code. Section 552.136 provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked the bank account number that must be withheld under section 552.136.

You also argue that some of the submitted information is excepted from disclosure under section 552.137 of the Government Code. This provision excepts from disclosure "an e-mail

address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. In addition, section 552.137 does not apply to a business's general e-mail or website address.

You inform us that no member of the public whose e-mail address is at issue has consented to the release of their e-mail address, and you also represent that none of the e-mail addresses are a type specifically excluded by section 552.137(c). We note, however, that the e-mail addresses you have marked include work e-mail addresses of government employees and general e-mail addresses of businesses. The city may not withhold these types of e-mail addresses, which we have marked, under section 552.137. However, the city must withhold the remaining e-mail addresses you have marked, unless the city receives consent for their release.

Finally, we note that some of the materials at issue may be protected by applicable copyright laws. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the user ID and password within the submitted information are not subject to the Act and need not be released. The personal information of the specified former employee which we have marked must be withheld under section 552.117. The bank account number within the submitted information must be withheld under section 552.136. The e-mail addresses of members of the public within the submitted information must be withheld under section 552.137. The city must release the remaining submitted information; however, in releasing information that is protected by copyright, the city must comply with copyright law.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/jev

Ref: ID# 220471

Enc. Submitted documents

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(w/o enclosures)